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Subject: recusal
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Tom

I have been asked to see whether an approach along the following lines (as an alternative to recusal) would be possible procedurally:

- “1. inform the judge that the company is appealing on the law and unfair procedure
2. ask the judge to stop the Horizon trial until the outcome of the appeal is determined on the grounds that if the unfairness claim is upheld it would also put the fairness of the Horizon trial at risk
3. If the judge refuses 2, seek and order from a higher court to the same effect and ask the judge at least to stop the Horizon trial until such an order can be obtained (or not)

If the remedy in 3 is sought but isn't obtained we will at least have tested the relevance and implications of unfairness issues on the second trial. And effectively a higher court will have told us that any unfairness in the first trial would not impact the Horizon trial (obviously contrary to POL's view).

If the remedy in 3 doesn't exist in law then recusal would be an alternative at that point. It seems to me the judge's refusal to agree to 2 would support a recusal application as he would be unwilling to accept that if unfairness took place in the first trial the nature of it would necessarily affect the conduct and fairness of the Horizon trial - a view which logically suggests bias as it is absurd.”

Could we please test this with the Counsel team? It may have the outcome that the judge is asked to recuse himself, but not necessarily. And seems to assume that we could get an appeal quite quickly, which must be uncertain. I'm also not sure that the logic in 2. holds up, and 3 means arguing procedural unfairness without (necessarily) arguing mis-application of the law etc.

Thanks,

Jane

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GRO

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